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**To:** Microsoft ATR  
**Date:** 1/23/02 3:58pm  
**Subject:** Microsoft Settlement

Hello,

This letter is my set of comments about the proposed settlement as part of the Tunney Act comment process.

## FUNDAMENTAL PROBLEM

The fundamental problem with the settlement is that Microsoft is completely out of control abusing its market monopoly, engaging in repeated and clear practices of product tying by using its monopoly position in operating systems to destroy other markets and eliminate competition, and the settlement does nothing to address this.

At a fundamental level Microsoft has grossly overstepped the bounds appropriate for an operating system product, and has been for several years the single biggest anti-competitive force in the computer industry.

## WHAT IS AN OPERATING SYSTEM?

The crux of Microsoft's abuses involves overstepping the definition of an operating system; I suggest this definition:

"An operating system abstracts computer hardware and provides a consistent interface for application programs to utilize."

An operation system enables applications.

A more generous definition of the operating system could perhaps be expanded to include "the minimal set of utilities required to maintain the computer hardware."

## THE BLOODY TRAIL

A casual reading of the trade press for the past 10 years reveals numerous companies devastated by Microsoft's decision to include successful "applications" in its "operation system", effectively destroying the markets in the process and eliminating future competition.

Examples of destroyed markets:

- 1) File managers
- 2) Disk defragmentation
- 3) Disk compression

- 4) WWW browser
- 5) E-Mail clients
- 6) Media players (currently being destroyed)

The first three examples could perhaps be covered by the minimal set of utilities to maintain the computer hardware, although there are considerations of a competitive market for computer hardware maintenance utilities.

The last three examples are most could not appropriate for an operating system.

#### A REPEATED PATTERN

Microsoft has consistently followed the pattern of defining API's (which is a valid function of an operating system and is pro-competitive) and then bundling "free" applications which destroy markets (not a valid function of an operating system and intentionally anti-competitive).

Furthermore, having both control over the operating system and early access to this information for application development gives Microsoft an unfair advantage over competitive applications that simply can't be overcome. All talk of a "Chinese wall" separating the operating system development and application development is a joke that not even Microsoft bothers to tell any more. This situation is grossly anti-competitive.

#### FALSE BENEFITS

Microsoft justifies bundling in terms of consumer benefit; consumers do benefit to some degree in the short term by getting applications for free.

However, in the long run consumers are hurt because:

- 1) Markets are destroyed
- 2) Competition is stifled
- 3) Choice is removed

Furthermore, every "free" application given to the consumer is fundamentally illegal because it represents monopoly product tying; applications should not be in the operating system (see definition above).

#### WWW BROWSER EXAMPLE

Microsoft claims Internet Explorer is a fundamental part of the operating system that can't be removed and still have a functional product. The company may have constructed its product in such a way that this is true; however, it still represents illegal tying of application and operation system.

Microsoft is free to define API's to include in its operating system, which it did liberally in its drive to embrace the Internet. API's fall into the consistent interface for application programs, and are pro-competitive.

However, as soon as Microsoft bundles an application to take advantage of the API's the line is crossed and the behavior becomes anti-competitive.

Applications and operating systems are separate products, and should not be mixed in an anti-competitive way.

## VOLUME LICENSES

One abuse of monopoly power that was not even mentioned during the trial was clauses in volume licenses that explicitly prevent dual-installation of another operating system co-existent with the Microsoft operating system. This is a gross and particularly glaring abuse of monopoly power designed to stifle competition.

## FAILURES OF THE SETTLEMENT

The settlement fails in numerous ways:

- 1) Microsoft has grossly overstepped the bounds of an operating system and repeatedly and illegally tied applications to its operating system; the settlement does nothing to address this fundamental transgression.
- 2) Microsoft's behavior has been grossly anti-competitive, severely abusing its monopoly market power; the settlement does nothing to address this.
- 3) Microsoft has illegally destroyed numerous markets and illegally stifled competition in methodical and repeated ways; numerous companies have suffered or been destroyed, unknown others have been intimidated out of markets or prevented from forming in the first place, and the entire competitive landscape of the computer industry has been negatively affected by Microsoft's actions; yet the settlement contains no punitive actions against Microsoft.
- 4) The settlement does not go far enough in curbing Microsoft's monopoly power in dictating terms in business dealings such as volume licensing deals.

## PERSONAL OPINION OF A YOUNG AMERICAN

My personal opinion is that the settlement is a bad joke. It sends the message that if you are a successful company somehow perceived as beneficial to the country then you can run roughshod over the law consistently and methodically and still escape punishment.

The settlement represents behavior of the government that disillusiones young Americans. I hope the Department of Justice will reconsider this ill-advised settlement and take actions to restore fair

competition to the computer industry.

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